

Whereas President George H. W. Bush has stated that Simon Wiesenthal, "is our living embodiment of remembrance. The two pledges of Simon Wiesenthal's life inspire us all — 'Never forget' and 'Never again.'";

Whereas President William Clinton has remarked of Simon Wiesenthal, "To those who know his story, one of miraculous survival and of relentless pursuit of justice, the answer is apparent. From the unimaginable horrors of the Holocaust, only a few voices survived, to bear witness, to hold the guilty accountable, to honor the memory of those who were killed. Only if we heed these brave voices can we build a bulwark of humanity against the hatred and indifference that is still all too prevalent in this world of ours."; and

Whereas, at the end of a life dedicated to the pursuit of justice and advocacy for victims of the Holocaust, Simon Wiesenthal passed away on September 20, 2005, at the age of 96: Now, therefore, be it

*Resolved, That the Senate—*

(1) expresses its most sincere condolences to the family and friends of Simon Wiesenthal;

(2) recognizes the life and accomplishments of Simon Wiesenthal, who, after surviving the Holocaust, spent more than 50 years helping to bring Nazi war criminals to justice and was a vigorous opponent of anti-Semitism, neo-Nazism, and racism; and

(3) recognizes and commends Simon Wiesenthal's legacy of promoting tolerance, his tireless efforts to bring about justice, and the continuing pursuit of these ideals.

#### IRAN NONPROLIFERATION ACT OF 2000

Mr. BENNETT. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be discharged from further consideration of S. 1713, and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 1713) to make amendments to the Nonproliferation Act of 2000 related to International Space Station payments.

There being no objection, the Senate proceeded to consider the bill.

Mr. LUGAR. Mr. President, on September 15 I introduced a bill to amend the Iran Nonproliferation Act of 2000, Public Law 106-178. The bill, S. 1713, provides authority for the administration to continue to cooperate with the Russian Federation on the International Space Station.

Current law prohibits certain payments from being made to Russia. When Congress enacted the Iran Nonproliferation Act, INPA, it did so to provide the President with a means to address proliferation of ballistic missile-related and other dangerous dual-use technology to Iran. Congress passed and the President signed legislation designed to give the executive branch additional tools with which to address Russian proliferation and the proliferation of other countries that are transferring dangerous weapons technology to Iran. The legislation was also meant to enhance significantly the ability of Congress to monitor pro-

liferation to Iran and oversee executive efforts to combat it.

With regard to Russia, at the time of its enactment, the rationale for INPA restrictions on payments to Russia for cooperation on the International Space Station was that the Russian Aviation and Space Agency, RASA, could use any legal or operational authority it may have had over certain organizations and entities that might be proliferating to Iran to stop such activities.

I continue to believe that Russia must prevent proliferation to Iran of weapons of mass destruction, their means of delivery and the technical know-how to make them.

The bill I introduced last week does not condone the proliferation activities of Russian entities nor those of others proliferating to Iran. It does allow the United States to meet its obligations under the Agreement Concerning Cooperation on the Civil International Space Station. While it creates an exception for certain U.S. payments to Russia in support of the space station, it also mandates that Congress be kept aware of the specific Russian entities to which the United States makes payments, and that the President determine that such payments are not prejudicial to our nonproliferation policies with respect to cruise and ballistic missile proliferation to Iran or other state sponsors of terrorism.

Since the introduction of S. 1713, a question has arisen as to which agreements might be negotiated under its authority that could, in fact, obligate the United States to make payments beyond the date specified in section 3 of that bill. It is my intention that no payments may be made after January 1, 2012. Also, I understand that NASA intends to accelerate its crew exploration vehicle, CEV, program so as to avoid any complications that might arise as a result of continued U.S. utilization of Russian-provided technology during the period between the shuttle's retirement and the CEV becoming operational.

I want to thank all my colleagues for their cooperative consideration of this bill. I urge the Senate to pass S. 1713.

Mr. BENNETT. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the measure be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 1713) was read the third time and passed, as follows:

S. 1713

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Iran Nonproliferation Amendments Act of 2005".

#### SEC. 2. FINDINGS.

Congress makes the following findings:

(1) The Director of Central Intelligence's most recent Unclassified Report to Congress

on the Acquisition of Technology Relating to Weapons of Mass Destruction and Advanced Conventional Munitions, 1 July Through 31 December 2003, states "Russian entities during the reporting period continued to supply a variety of ballistic missile-related goods and technical know-how to countries such as Iran, India, and China. Iran's earlier success in gaining technology and materials from Russian entities helped accelerate Iranian development of the Shahab-3 MRBM, and continuing Russian entity assistance has supported Iranian efforts to develop new missiles and increase Tehran's self-sufficiency in missile production."

(2) Vice Admiral Lowell E. Jacoby, the Director of the Defense Intelligence Agency, stated in testimony before the Select Committee on Intelligence of the Senate on February 16, 2005, that "Tehran probably will have the ability to produce nuclear weapons early in the next decade".

(3) Iran has—

(A) failed to act in accordance with the Agreement Between Iran and the International Atomic Energy Agency for the Application of Safeguards in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons, done at Vienna June 19, 1973 (commonly referred to as the "Safeguards Agreement");

(B) acted in a manner inconsistent with the Protocol Additional to the Agreement Between Iran and the International Atomic Energy Agency for the Application of Safeguards, signed at Vienna December 18, 2003 (commonly referred to as the "Additional Protocol");

(C) acted in a manner inconsistent with its obligations under the Treaty on the Non-Proliferation of Nuclear Weapons, done at Washington, London, and Moscow July 1, 1968, and entered into force March 5, 1970 (commonly referred to as the "Nuclear Non-Proliferation Treaty"); and

(D) resumed uranium enrichment activities, thus ending the confidence building measures it adopted in its November 2003 agreement with the foreign ministers of the United Kingdom, France, and Germany.

(4) The executive branch has on multiple occasions used the authority provided under section 3 of the Iran Nonproliferation Act of 2000 (Public Law 106-178; 50 U.S.C. 1701 note) to impose sanctions on entities that have engaged in activities in violation of restrictions in the Act relating to—

(A) the export of equipment and technology controlled under multilateral export control lists, including under the Australia Group, Chemical Weapons Convention, Missile Technology Control Regime, Nuclear Suppliers Group, and the Wassenaar Arrangement or otherwise having the potential to make a material contribution to the development of weapons of mass destruction or cruise or ballistic missile systems to Iran; and

(B) the export of other items to Iran with the potential of making a material contribution to Iran's weapons of mass destruction programs or on United States national control lists for reasons related to the proliferation of weapons of mass destruction or missiles.

(5) The executive branch has never made a determination pursuant to section 6(b) of the Iran Nonproliferation Act of 2000 that—

(A) it is the policy of the Government of the Russian Federation to oppose the proliferation to Iran of weapons of mass destruction and missile systems capable of delivering such weapons;

(B) the Government of the Russian Federation (including the law enforcement, export promotion, export control, and intelligence agencies of such government) has demonstrated and continues to demonstrate a

sustained commitment to seek out and prevent the transfer to Iran of goods, services, and technology that could make a material contribution to the development of nuclear, biological, or chemical weapons, or of ballistic or cruise missile systems; and

(C) no entity under the jurisdiction or control of the Government of the Russian Federation, has, during the 1-year period prior to the date of the determination pursuant to section 6(b) of such Act, made transfers to Iran reportable under section 2(a) of the Act.

(6) On June 29, 2005, President George W. Bush issued Executive Order 13382 blocking property of weapons of mass destruction proliferators and their supporters, and used the authority of such order against 4 Iranian entities, Aerospace Industries Organization, Shahid Hemmat Industrial Group, Shahid Bakeri Industrial Group, and the Atomic Energy Organization of Iran, that have engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons), including efforts to manufacture, acquire, possess, develop, transport, transfer, or use such items.

### SEC. 3. AMENDMENTS TO IRAN NONPROLIFERATION ACT OF 2000 RELATED TO INTERNATIONAL SPACE STATION PAYMENTS.

(a) TREATMENT OF CERTAIN PAYMENTS.—Section 7(1)(B) of the Iran Nonproliferation Act of 2000 (Public Law 106-178; 50 U.S.C. 1701 note) is amended by inserting after “such date” the following: “, except that such term does not mean payments in cash or in kind made or to be made by the United States Government, to meet the obligations of the United States under the Agreement Concerning Cooperation on the Civil International Space Station, with annex, signed at Washington January 29, 1998, and entered into force March 27, 2001, or any protocol, agreement, memorandum of understanding, or contract related thereto, to January 1, 2012”.

(b) REPORTING REQUIREMENTS.—Section 6 of such Act is amended by adding at the end the following new subsection:

“(i) REPORT ON CERTAIN PAYMENTS RELATED TO INTERNATIONAL SPACE STATION.—

“(1) IN GENERAL.—The President shall, together with each report submitted under section 2(a), submit to the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives a report that identifies each Russian entity or person to whom the United States Government has, since the date of the enactment of the Iran Nonproliferation Amendments Act of 2005, made a payment in cash or in kind to meet the obligations of the United States under the Agreement Concerning Cooperation on the Civil International Space Station, with annex, signed at Washington January 29, 1998, and entered into force March 27, 2001, or any protocol, agreement, memorandum of understanding, or contract related thereto.

“(2) CONTENT.—Each report submitted under paragraph (1) shall include—

“(A) the specific purpose of each payment made to each entity or person identified in the report; and

“(B) with respect to each such payment, the assessment of the President that the payment was not prejudicial to the achievement of the objectives of the United States Government to prevent the proliferation of ballistic or cruise missile systems in Iran and other countries that have repeatedly provided support for acts of international terrorism, as determined by the Secretary of State under section 620A(a) of the Foreign

Assistance Act of 1961 (22 U.S.C. 2371(a)), section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)), or section 40(d) of the Arms Export Control Act (22 U.S.C. 2780(d)).”.

Mr. BENNETT. I thank the Chair. I now yield the floor so that the Senator from Massachusetts can make his statement.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, I thank the chairman of the committee and the Senator from Utah for his courtesies. I know he is eager to get on with the legislation, and I am particularly grateful to him for the courtesy that he has extended this morning.

### NOMINATION OF JOHN ROBERTS

Mr. KENNEDY. Mr. President, our Founders proclaimed the bedrock principle that we are all created equal. But everyone knows that when we started, the reality was far different. For more than two centuries, we have struggled, sometimes spilling precious blood, to fulfill that unique American promise. The goals, the principles, and the sacrifices of millions of Americans breathed an ever fuller life into our constitutional ideals.

The Constitution itself has been the inspiration for this march of progress. The open-ended principles that our Founders had the wisdom to bequeath us have acquired ever-deepening meaning over the years—a remarkably steady movement toward greater protection for individual rights and liberties, and an increasing assurance that governments at all levels have the authority to defend ordinary Americans from overreaching by those who would discriminate against them or exploit them.

We have made much progress. But our work is not finished, and we still look to our elected representatives and our independent courts to uphold those founding principles in each new generation, to continue the great march of progress, to never turn back and never give up our hard-won gains.

This was the basic issue in our hearings on the nomination of John Roberts to become our next Chief Justice. Would he bring to that high office the values and ideals that would enable our struggle for equality and opportunity for all to continue, or would he stand in the way?

The only records made available to us were those of John Roberts as an aggressive activist in the Reagan administration, eager to limit basic values that we have achieved at great cost and sacrifice over the years, especially in basic areas such as voting rights, women's rights, civil rights, and disability rights. He is an outstanding lawyer who says he could represent clients on any side of a question. As Congressman JOHN LEWIS eloquently stated in our hearings, 25 years ago, John Roberts was on the wrong side of the Nation's struggle to achieve genuine

equality of opportunity for all Americans. Now, we need to know which side he is on today. We need to know that as Chief Justice of the United States, his sole client would be all the American people.

John Roberts is a highly intelligent nominee. He has argued 39 cases before the Supreme Court and won more than half of them. He is adept at turning questions on their head while giving seemingly appropriate answers. These skills served him well as a Supreme Court advocate. These same skills, however, did not contribute to a reasonable confirmation process. At the end of the 4 days of hearings, we still know very little more than we knew when we started.

In answer to another question about his views, he stated again:

I will confront issues in this area as I would confront issues in any area, . . . and that would be to fully and fairly consider the arguments presented and decide them according to the rule of law.

In yet another instance, he proclaimed:

The responsibility of the judicial branch is to decide particular cases that are presented to them in this area according to the rule of law.

And again:

I became a lawyer or at least developed as a lawyer because I believe in the rule of law.

The rule of law—everyone in the Senate agrees with that. In fact, we have each taken an oath of office to protect and defend the Constitution, and we take that oath seriously. But it reveals little about how we will vote on the important questions of the day, and what values and ideals we bring to our decisions.

Judge Roberts said that a judge should be like an umpire, calling the balls and strikes but not making the rules.

But we all know that with any umpire, the call may depend on your point of view. An instant replay from another angle can show a very different result. Umpires follow the rules of the game. But in critical cases, it may depend on where they are standing when they make the call.

The same holds true of judges.

As Justice Oliver Wendell Holmes famously stated:

The life of the law has not been logic; it has been experience.

As Justice Stephen Breyer offered in his confirmation hearing:

I always think law requires both a heart and a head. If you do not have a heart, it becomes a sterile set of rules, removed from human problems, and it will not help. If you do not have a head, there is the risk that in trying to decide a particular person's problem in a case that may look fine for that person, you cause trouble for a lot of other people, making their lives yet worse.

The rule of law is not some mathematical formula for meting out justice. It is our values and ideals that give it real meaning in the case of the Constitution, not our personal values and ideals but our values and ideals, derived from the meaning of the constitutional text.